MASS. AG1.2: M 11

UMASS/AMHERST
312066 0269 7464 0

MOBILE HOME PARK

LAW GUIDE

GOVERNMENT DOCUMENTS COLLECTION

University of Massachusetts Depository Copy

SCOTT HARSHBARGER
ATTORNEY GENERAL

SECRETARY MARY L. PADULA
EXECUTIVE OFFICE OF
COMMUNITIES AND DEVELOPMENT

Digitized by the Internet Archive
in 2012 with funding from
Boston Library Consortium Member Libraries

http://archive.org/details/mobilehomeparkla00mass

TABLE OF CONTENTS

INTRODUCTION.....1

Legal Citations.....2
Citation Form.....2
Resources.....2
Related Publications.....3

I. TECHNICAL ASPECTS OF MOBILE HOME LAWS.....4

A. What Is A Mobile Home?.....4

B. What Is A Mobile Home Park?.....4

Licenses.....4
Health Standards.....4
Recordkeeping.....5
Rule Posting.....5

C. Registration Laws and Proof of Ownership.....5

Titles.....5

D. Taxation.....6

The One Exception.....6

II. WHAT YOU SHOULD KNOW BEFORE YOU MOVE IN.....6

The Important Notice.....7

III. THE RULES OF THE GAME, PART I: ACCORDING TO THE PARK OWNER.....7

A. The Six Requirements.....7

1. Reasonableness.....7
2. The Attorney General's Review.....8
3. Rules Changes.....8
4. Uniform Application.....8
5. Retroactivity.....9
   Retroactive Sales Restrictions.....9
6. Restrictions on Choice of Suppliers.....9

B. A Short Catalog of Particular Rules Problems.....10

1. Rules Signing.....10
2. Rules In a Lease.....10
3. Penalties for Past Due Rent.....11
4. Tax Escalator Clauses.....11

5. Rent Increase Clauses.....11
6. Binder Clauses.....11
7. Repair Responsibilities.....11
8. Subleasing.....11
9. Occupancy Limitations.....12
10. Wheels, Towbars and Axles.....12
11. Commissions or Entrance Fees.....12
12. Screening Prospective Purchasers.....12
13. Application Fees.....12
14. Rights of First Refusal.....13
15. Selling Agents.....13
16. Posting of Signs.....13
17. Aesthetic Requirements.....13
18. Park Owner's Discretion.....13
19. Liability.....13
20. Obsolescence.....14
21. Adult Communities.....14
22. Supervision of Children.....14
23. Cars.....14
24. Fire or Casualty Removal.....14
25. Extra Fees for Pets.....15
26. Insurance Requirements.....15
27. Plantings.....15
28. Additional Charges As Rent.....15

IV. THE RULES OF THE GAME, PART II: ACCORDING TO THE ATTORNEY GENERAL.....15

A. The Attorney General's Regulations.....15

1. Conditions and Maintenance of a Mobile Home or Mobile Home Lot.....15
2. Notices and Demands.....16
3. Rental Agreements.....16
4. Miscellaneous.....17

B. The State Sanitary Code.....17

V. MOVING IN AND MOVING OUT - VOLUNTARILY.....18

A. The Purchase and Sale of Mobile Homes.....18

1. Discrimination.....18
2. Retirement Communities.....18
3. A Cautionary Note for Park Owners.....19

VI. WHAT TO DO WHEN YOU'RE NOT WANTED (or, Moving Out - Involuntarily!).....19

A. Evictions.....19

B. Retaliatory Actions.....20

VII. REMEDIES.....20

A. Repair and Deduct.....21

B. Rent Withholding.....21
Practical Advice About Rent Withholding.....22

C. The Consumer Protection Act.....23

D. Small Claims Court.....24

VIII. WARRANTY PROTECTIONS AGAINST MOBILE HOME DEFECTS.....25

A. Defects.....25

B. Warranty Protections.....26

1. Written Warranties.....26
2. Express Warranties.....26
3. Implied Warranties.....27

C. Enforcing Warranty Rights.....28

IX. CONCLUSION.....29

it just means that you are purchasing a more effective means of persuading the other side of the validity of your claims. Lawyers act as negotiators; intermediaries, and conciliators, not just as courtroom adversaries.

When both parties know what the law requires in a particular situation, there is much more room for a fair agreement than when one or both are ignorant of it. Consequently, this booklet was created in the belief that a little knowledge is not a dangerous thing, but is beneficial, and will result in an improved climate of owner-resident relations.

Note - This boolet is not the law. It is aguide to the law prepared by the Attorney General's Consumer Protection Division. It does not constitute an Offical Opionion. For further clarification you should consult a private or legal aid attorney.

Legal Citations - References to particular laws and regulations are included in this booklet. Statutory citations can be checked at most local libraries. The Attorney General's Regulations and the State Sanitary Code are obtainable trough the State House bookstore.

Citation Form - Legal abbreviations are used in the Blueprint. The following are examples of what the abbreviations mean:

G.L. c.93A 52 - Massachusetts General Laws,
Chapter 93-A, Section 2.

940 CMR 3.17 - Chapter 940, Code of Massachusetts
Regulations, Section 3.17

38 USC 51818 - Title 38 of the United States Code
Section 1818

24 CFR 210.520 - Volume 24 of the Code of Federal Regulations
Section 210.520

Resources - The following agencies may be of assistance if you need advice:

Local Consumer Groups

Massachusetts Mobile Homes Commission
Executive Office of Communities and Development
100 Cambridge Street
Boston, MA 022021
(617) 727-7824

- Consumer Protection Division
  Department of the Attorney General
  One Ashburton Place
  Boston, MA 02108
  (617) 727-8400

- Massachusetts Tenants Organization
  14 Beacon Street
  Boston, MA 02108
  (617) 367-6260

Related Publication:

"You Can Get Results
Massachusetts Consumers Council
100 Cambridge Street
Boston, MA 02202

"Legal Tactics: A Handbook for Tenants"
Massachusetts Tenants Organization
14 Beacon Street
Boston, MA 02108

"How to Sue in Small Claims Court"
Massachusetts PIRG
120 Boylston Street
Boston, MA 02116
also
233 North Pleasant Street
Amherst, MA 01002

The remainder of this publication is organized in eight sections. Section I covers technical aspects of mobile home law. Section II discusses what you are entitled to know before moving into a mobile home park. Section III covers mobile home park rules and regulations. Section IV describes the various regulatory protection you have. Section V reviews the law covering the purchase and sale of mobile homes. Section VI details procedures for termination of tenancies. Section VII describes various remedies available if your rights are violated. Finally, Section VIII details warranty protection for mobile home owners.

I. Technical Aspects of Mobile Home Laws

A. What is a Mobile Home?

A dwelling unit is a "Mobile Home" based on how it is built, not how it looks. Massachusetts law defines a "Mobile Home" as "a dwelling unit built on a chassis and containing complete electrical, plumbing, and sanitary facilities, and designed to be installed on a temporary or permanent foundation for permanent living quarter." **G.L. c.140 320.** Since June 16, 1976 all "Mobile Homes" have been built to a single national construction code, authorized by Congress and administered by the U.S. Department of Housing and Urban Development (HUD). The federal law, which is more detailed, establishes a minimum length and width (8' x 40') and/or a minimum size (320 square feet). It also refers to these dwellings as "manufactured homes." Because both terms are used, the remainder of this publication will adopt the abbreviation "MH" to refer to these dwellings.

Because MHs are built on a chassis and initially can be moved, having their own wheels, axles and towbar, MH owners often fear that if they remove the wheels, axles and/or towbar, or make additions to the home (such as patio awnings) they somehow no longer own a MH. This is not true. So long as the dwelling was built according to the state or federal definition, it is a mobile/manufactured home.

B. What is a MH Park?

For purposes of the law, a MH park is defined as any lot or tract of land on which three or more MHs are located for dwelling purposes. **G.L.c.140 32F.** Any person who wishes to operate a MH park must obtain a license. **G.L.c.140 32A.** If a park operator fails to obtain a license or continues to operate a park after losing his license, he is subject to a find of up to $100. **G.L. c.140 32B.**

Licenses

Licenses to operate MH parks are granted by local boards of health. These licenses are valid for one year and expire on December 31st of the year issued. The board of health may suspend, revoke, or refuse to renew these licenses in its discretion. **G.L. c.140 32B.**

Health Standards

The local boards of health are required by law to periodically examine the MH parks they license to ensure that they meet state health standards. If a board finds that a park is in an unsanitary condition, it may, after notice and a hearing, suspend or revoke the park operator's license. **G.L. c.140 32C.**

The state Department of Environmental Quality Engineering (DEQE) is notified of each park licensed by the local boards of health. The DEQE also has jurisdiction to inspect MH parks, to make sure that their sources of water supply and sewage systems are sanitary. If the DEQE finds unsanitary conditions in a park's water or sewer systems, the park operator is given thirty days (30) to correct the problem or lose his license. The license may be reinstated if the unsanitary conditions are later remedied by the park operator.

Local boards of health also have the authority to create rules and regulations to protect the residents in any MH park from unhealthy living conditions. **G.L. c.140 32B.**

Recordkeeping

Every park operator must keep a permanent record containing the name and address of each resident of the park; his or her date of entry into the park; and where applicable, the date any MH is removed from the park. This record must be shown to any authorized law enforcement officer who wishes to inspect it. **G.L. c.140 32I.**

Rule Posting

The park owner must also post the most recent set of park rules in a conspicuous place near the entrance of the park, for example, in the public area of the park office. **G.L. c.140 32D.**

C. Registration Laws and Proof of Ownership

MH"s must be registered in order to be transported on the highway, because Massachusetts law defines them as "trailers" that is, "any vehicle or object which is drawn by a motor vehicle." **G.L. c.90 1.** However, "trailers" more than 8 1/2 feet wide, 33 feet long, and 13 1/2 feet high cannot be put on the road without special oversize permits. **G.L. c.90 19.** State permits must be obtained to pass on state highways and local permits acquired for non-state roads, Any P.U.C. or I.C.C. mover will obtain these permits prior to moving any oversize MH.

Titles

Although MHs must be registered if put on the road, they need not be titled through the Registry of Motor Vehicles. The Registry does not recognize MHs as titleable vehicles, therefore ownership is usually proved by a bill of sale or certificate of origin. State law requires that a dealer provide a certificate of origin to a purchaser of a new MH. **G.L. c.90D 6.** These certificates look somewhat like motor vehicle certificates of title, however, unlike motor vehicle titles, certificates of origin are not required to be signed over to any subsequent purchaser of a MH> Consequently, if you own either a new or used MH and do not have a certificate of origin, don't worry, as you are not required to have one to prove ownership.

Insert

Two important amendments to the Massachusetts Mobile Home park law were enacted after this booklet was published, the first in 1983 **G.L. c.140 5 32L(8)** and **(9)** and the second in 1986 **G.L. c.140 55 32L(7a)** conjunction with the section on evictions on pages 19 & 20.

Discontinuance or change of use

Since 1983, Massachusetts law has required that residents of a mobile home park receive notice if the park owner decides to discontinue park operations or put the land to another use. If the city or town in which the park is located requires the park owner to get a permit for the discontinuance or use change, each resident of the park must get 15 days written notice that the park owner will be appearing before the proper authorities to request the permit. The notice must be delivered by registered or certified mail. The purpose of this notice is to give the residents a chance to oppose the granting of the permit.

Onec the park owner gets the permit, or if the city or town does not require a permit, the park owner must give each park resident at least two years' notice of the discontinuance or use change. This notice must also be delivered by certified or registered mail, and must describe the nature of the use change or discontinuance. **G.L. c.140, 532L (8).** Persons who want to move into the park after this notice has been given to park residents must also be informed of the proposed discontinuance or use change before they move in. **G.L. c.140 532L(9).**

Any use change or discontinuance must be in good faith and is subject to existing agreements. between the park owner and the residents. If the park owner sold any Mobile Home to park residents, those residents must be allowed to stay in the park until five (5) years after they purchased their homes. **G.L. c.140 532L.**

What does the 140 Amendments require?

The notice provisions that have been in effect since 1983 were not changed by the 1986 amendments, but the new law gives park residents some additional rights and protections once the two-year notice is given, **G.L. c.140 532 (7a).** The new law applies if the resident received notice of the park closing or after July 1, 1986.

1. Information About Space In Other Parks

The park owner must survey other parks within a 100-mile radius of the park to determine if there are spaces for additional mobile homes in those parks, or if any space will become available during the two-year notice period. The park owner must perform this survey at least once a year during the two-year notice period, and must post the results of the survey. he has to complete the second survey at least four months before the park closes.

2. Relocation Benefits

Each mobile home owner will receive $2000 in relocation benefits, to help with costs of the move. The park owner must pay this amount within 14 days after the mobile home leaves the park. If the park owner has to remove the mobile home for the resident, his costs will be subtracted from the $2,000.00.

3. Rental Agreement

Each mobile home owner must receive a rental agreement, which takes effect on the day that the park owner sends the two-year notice. The rental agreement must limit rent increases. **Rent cannot increase until a full year has passed since the last increase. Any rent increase must be tied to the Consumer Price Index, and can never be more than 10% percent of the past year's rent.**

4. Can The Residents Do Anything About A Park Closing/

Even before the amendments took effect, the law required thaat a park closing be **"in good faith" G.L. c.140 532J.** This requirment is still in effect. If a park closing is in bad faith for example, if the park owner is closing the park to retaliate against the residents because they reported violation of the law or health or building codes to the Attorney General or to a local agency, a court may be able to prevent or at least postpone the closing. Residents who believe that the park owner is closing the park in bad faith may wish to consult an attorney.

The 1986 amendments provide a new way for park residents to keep the park open. The residents may be able to buy or lease the park from the park owner. **G.L. c.140 532R.**

1. **How Do Residents Acquire The Right To Purchase The Park ?**

The resident must form an incorporated home owners' association with at least 51% percent of the mobile home owners in the park as members. The Association must have the power to negotiate for, acquire and operate the park on behalf of the member residents. The Association must send a certified letter to the park owner, informing him that the Association has the correct percentage of park residents and the powers listed above.

If the park owner is selling or leasing the park, the Association may buy or lease it. The Association's right to buy or lease the park does not apply if the Government buys the park or takes it by eminent domain, if the park is sold at a foreclosure sale, or if the park is given to or inherited by an heir of the owner.

2. **How Do The Residents Exercise The Right ?**

Once the park owner has received the letter from the Association informing him that the association is properly constituted, the owner must give the Association the first chance to buy or lease the park, if he plans to sell it for any purpose or lease it for a purpose that would prevent it from remaining a mobile home park. This is called a 'right of first refusal.' The park owner must notify the Association by certified mail of any offer he receives to buy or lease the park, if he intends to accept the offer. (He must also give the Association written notice, by certified mail, within 14 days after he places any advertisement or otherwise notifies the general public that the park is up for sale or lease.) The Association may buy or lease the park for the same price and on the same terms as the person who offers to buy or lease it, if the Association **(1)** executes a purchase or lease agreement with the owner within 45 days after it receives notice of the offer, and **(2)** obtains financing within an additional 45 days. The park owner and Association may extend these time periods by agreement or delaying in signing.

Please refer to the law itself for details about calculation of price and other financial matters, and what happens if the park owner receives more than one offer for the park.

It is always a good idea to have some proof of ownership though, e.g., a notarized bill of sale.

D. Taxation

There are two taxes that are imposed on almost every MH in Massachusetts: The sales tax and the fee in lieu of taxes, usually known as the "MH tax".

The sales tax is applicable to sales of new and used MH's owned by dealers. Individuals who are selling their homes are not subject to the sales tax.

The fee in lieu of taxes is a license fee collected for the town by the park operator and paid by the residents. This fee may vary from $6 to $12 per month, the actual amount being set by the individual cities and towns. The park operator is required to collect this fee and turn it over to the town monthly. **G.L. c.140 32G.**

The One Exception

MH's are classified as personal property for the purpose of these taxes. In paying the monthly $-6-$12 fee, MH owners are exempted from any property tax which otherwise might be imposed. **G.L. c.59 5.** As MH's are personal property, towns may tax them only through the fee in lieu of taxes, except in rare circumstances where a real property tax can be levied. Such a unique circumstance once arose when the town of Acushnet imposed a real property tax on the owner of a MH who had removed the wheels, axles, and towbar and permanently affixed his MH to a poured concrete foundation with a full cellar. The state Supreme Judicial Court upheld this tax, reasoning that once a mobile home becomes permanently affixed to the land it can be taxed as real property. Ellis v. board of Assessors of Acushnet, 358 Mass 473 (1970)
.

E. What you Should know before you move I

Before you agree to rent a space in a park, the park operator is required to disclose to you all the terms of your tenancy and the rules of the park to which you will be subject. This must be done at a reasonable time before he rents you a lot. **G.L. c.140 32P.** This law is designed to protect people from entering into a rental contract and then finding out, for example, that they can only sell their home to a person over 55 should they wish to move out, or that not pets are allowed in the park. Its purpose is to avoid unfair surprises. You should know what you are getting into before you enter into any kind of agreement, and as such the law requires that any prospective resident be informed, at a minimum, of the following:

1.) the amount of rent;

2.) any other charges or fees which may be imposed, disclosed in an itemized list;

3.) the names and address of all owners of the park; and

4.) the rules and regulations governing the use of the lot and park.

This written disclosure must be signed by both the park owner and resident. It also must contain what is known as the **IMPORTANT NOTICE REQUIRED BY LAW.** This notice must be printed verbatim from the statute that requires it in a clear and conspicuous manner. G.L. Chapter 140, section 32P. In summary, the notice must state that:

1.) park rules and regulations must be fair and reasonable, or they cannot be enforced;

2.) you may continue to stay in the park as long as you pay your rent and abide by the park rules and regulations;

3.) you can be evicted only for one of the three reasons: non-payment of rent, violation of certain laws, or a substantial violation of the rules and regulations of the park;

4.) if the park restricts your choice of suppliers of certain goods, requiring you to buy from persons selected by the park, it must ensure that the prices you pay for those goods do not exceed the prevailing price in the area for goods of a similar nature; and

5.) you cannot be evicted in retaliation for reporting any violation of law to appropriate authorities.

III. THE RULES OF THE GAME, PART I: ACCORDING TO THE PARK OWNER

State law permits a park operator to create rules and regulations governing the residents' use of the park. G.L. Chapter 140, section 32L. However, the law also creates six specific requirements to guarantee that no resident's rights are abused by any of the rules a park operator may devise.

1.) Reasonableness

The first and most important requirement is that the rules be fair and reasonable. G.L. C. 140, sec. 32L(1). Although this is a very general and sweeping law, it is fairly easy to apply. If you question the fairness or reasonableness of a particular rule, use common sense to determine whether it complies with the fairness law. If, on reflection, you cannot think of a legitimate justification for it, it may not be fair and reasonable, in which case it would be in violation of the law. G.L. C. 140 sec.32L(6).

2.) The Attorney General's Review

To guard against the imposition of unfair and unreasonable rules, the law requires that any change in the rules be filed with the Attorney General at least 45 days before it is to go into effect. G.L. Chapter 140 section 32L(5). Each set of rules so filed is carefully reviewed for compliance with the law. If problems exist, the park operator is notified and appropriate revisions suggested. Assuming that the Attorney General's proposed revisions are adopted, the park operator is then notified by letter that the Attorney General has no objections to the rules. If you think the rules are unreasonable, ask to see a copy of the letter from the Attorney General.

3.) Rules Changes

Any rules change must be written and a copy provided to each park resident. To ensure that the new rules are so provided, the law requires that each copy of the rules changed be signed by the park owner and each tenant. G.L. Chapter 140, section 32L(5).

4.) Uniform Application

Any change in the rules or rent must apply uniformly to all persons of a similar class. G.L. C.140 sec. 32L(2). Essentially, this law requires that everyone in a park be treated equally unless there is some legitimate distinction separating one person or group from another for purposes of rental charges or rules restrictions. For example, if one section of a park is reserved for "luxury" homes and has better facilities than the rest of the park, this may justify a park owner imposing greater rent increase on the residents who live there than on those who don't because the cost of maintaining those facilities may not be increasing at a greater rate than those servicing the rest of the park. However, unless there is justification for differentiating between individuals or groups in the application of rules or

rental charges, the park owner may be violating the law. Like the requirement that rules must be reasonable, common sense is the best guide to use if you question the unequal imposition of rent or application of rules. If the park owner can explain the reason for treating some people differently than others, and it seems to be a fair distinction that is being made, then it is probably legal.

5.) Retroactivity

Any change in the rules which retroactivity affects park residents' in a negative and substantial way is also against the law. Park residents have certain "grandfather rights" that cannot be affected be a change in park rules. For example, if a resident moved into a park at a time when pets were allowed, the resident could not be asked to get rid of the pet. However, the creation of a speed limit in the park when one did not exist before, or a right of first refusal on MH sales, are examples of reasonable rules which could be applied retroactively.

Retroactivity Sales Restrictions - A major problem with respect to retroactive cutoff of residents rights is created by a rule implementing a changeover from an open-access park to a retirement community (See pgs. 14 & 18 for a discussion of retirement communities

Any attempt to require that residents in an open-access park (i.e., anything but a retirement community) sell their homes only to buyers over 55 years of age is illegal. It is an unfair retroactive application of a rule that the residents were not subject to when they moved into the park. If a park owner wishes to convert the park to a retirement community it must be done by attrition. That is, they must notify the present residents by rules change of his intention and inform incoming residents, via this rules change, that when and if they wish to move, the 55 year age restriction will be applied to any of their prospective purchasers. Of course, residents may voluntarily sell their homes only to persons over 55, but cannot be forced to waive their unrestricted right of resale.

6.) Restrictions on Choice of Suppliers

Tenants cannot be restricted in their choice of a supplier of goods, fuel, furnishings, services or accessories, unless such restrictions satisfy two requirements:

i) they are necessary to protect the health, safety or welfare of park residents; and

ii) the park ensures that the prices residents pay for the goods or services provided by the designated suppliers do not exceed the prevailing price in the area for similar goods or services. G.L. Chapter 140, section 32L(3).

For example, a park may enact a rule limiting park residents to dealing with one of two designated oil companies, based upon its claim that having a number of oil trucks form different companies coming into the park creates a safety hazard, but couldn't limit residents to dealing with only one home improvement contractor as there would be no health or safety justification for such a limitation. Even with reasonable restrictions the key is the price charges by the designated supplier. If the designated oil company does not provide the goods and services residents desire at a price that is comparable to that charged by competitors in the area, then despite the restriction, the residents don't have to deal with that company and can shop around for the best price. G.L. Chapter 140, section 32L(3),32P.

B. A SHORT CATALOG OF PARTICULAR RULES PROBLEMS

Following is a short list of some particular rules problems and the law which applies to them:

1.) Rules Signing - G.L. Chapter 140, section 32L(6) requires that both park owner and resident "shall" sign the rules. This means that you are **required by law** to sign the rules. This does not mean that you have to accept and abide by unfair or unreasonable rules, even it there is a binder clause. Any rule that is unfair or unreasonable is in violation of the law and is unenforceable. G.L. Chapter 140 section 32L(1),(6). If you have doubts, ask to see a copy of the Attorney General's letter notifying the park owner that there are no objections to the rules.

2.) **Rules in a Lease** - the law allows a park owner to create rules "governing the rental or occupancy of a mobile home..." G.L. C. 140, section 32L(1). Sometimes park owners create sets of rules which contain lease provisions and at other times they create leases which contain rules. Technically, these combinations are improper, as the lease is a contractual agreement between park owner and resident,

whereas the rules are merely imposed, not agreed upon, and they do not rise to the level of a contract. It is unclear what legal effect rules in a lease or lease provisions in a set of rules have. Consequently, it is advisable to have clear and separate documents for the rules and the lease contract.

3.) **Penalties for "Past Due" Rent** - you cannot be charged a penalty for late rent unless it is more than 30 days overdue. G.L. Chapter 186, Section 15B (1)(C).

4.) **Tax Escalator Clauses** - any tax escalator clause must contain the following information:

a.) that the resident is obligated to pay only his proportionate share of any tax increase;

b.) exactly what that proportion is, expressed in a percentage;

c.) that if the park owner obtains a real estate tax abatement on the park property a proportionate share of that abatement shall be refunded to the resident. G.L. C. 186 Sec. 15C.

Any tax escalator clause that does not meet these requirements is void.

5.) **Rent Increase Clauses** - are legal as long as they are clear and conspicuous. 940 CMR 3.17(3)(a)(c). Clear and conspicuous means that a term is "readily noticeable". Language in a document is conspicuous if in larger or contrasting type or color than the rest of the document.

6.) **Binder Clauses** - the park owner may include a rule which requires the resident to abide by the present rules and all future lawful rules but not just all future rules, as he cannot bind the resident to obey rules which are illegal. (See Rules Signing.)

7.) **Repair Responsibilities** - as a general rule, with respect to utilities, sewer and water connections, if the problem is underground it is the park's responsibility; from the ground up it's the resident's.

8.) **Subleasing** - should be permitted with the approval of park management. Unlike an apartment dweller subletting their apartment, a mobile homeowner is leasing their own property, the mobile home itself, and only tangentially subleasing the lot it occupies. As a

it occupies. As a park owner cannot unreasonably dictate the use to which a resident puts his personal property, this "subleasing" should be allowed. Approval should not be unreasonably withheld, but the park owner may protect his property interest by making approval contingent on the sublessee going through the screening procedure used for prospective purchasers. (See page 18, Purchase and Sales of Mobile Homes).

9.) **Occupancy Limitations** - can be imposed only for health and safety reasons. Regulations issued by the federal Department of Housing and Urban Development and regulations governing publicly funded housing in Boston set guidelines of two persons per bedroom. The Attorney General recognizes this as a fair limitation. HUD Occupancy Handbook (No. 7465, 1, revised section 2.17(b); 760 CMR 5.02(3) Table 2).

10.) **Wheels, Towbars, and Axles** - it is the Attorney General's position that these are the property of the MH owner unless it is clearly disclosed in the purchase and sale agreement that the dealer is retaining possession of them.

11.) **Commissions or Entrance Fees** - neither residents selling their homes nor their prospective purchasers can be required to pay any sort of fee to park management solely as a condition of moving into or out of the park.

Any fee imposed without justification, i.e., without some service being provided in return for the fee being paid is illegal.

12.) **Screening Prospective Purchasers** - the park owner can require that they be notified in advance of a sale (usually 30 days) so that they may screen the prospective purchaser to determine a credit and character history. Fairness and the avoidance of problems the buyer might face if this notice and screening procedure is not followed dictate that the resident seller comply with any screening and notice rules. Similarly, the same reasons dictate that the park owner not unreasonably withhold approval of a prospective purchaser or use the screening procedure to lure the prospective buyer away in order to sell one of their own MH's. The best way to prevent this from happening is to accompany your prospective buyer to the park's screening interview.

13.) **Application Fees** - checking character and credit references costs the park owner money, but a fee cannot be charged directly to a prospective tenant. This cost must be tacked onto overhead and collected from residents by way of increased rent. G.L. C.186, section 15B. Similarly, the park can never charge the resident seller for screening costs, as this would amount to the charge of a fee

without a service being provided.

14.) **Right of First Refusal** - a park owner can require that he be given the right of first refusal on any MH offered for sale in the park, but only if he will purchase the MH for the same price proposed in any bona fide offer by a prospective buyer.

15.) **Selling Agents** - the park owner cannot require that you use him as a broker or selling agent if you are selling your home. Neither can they unjustifiably refuse access to the park to any selling agent of your own choosing. You may choose to use the park owner as broker if you wish, but if you do they are restricted to a maximum commission of 10% of the sale price of the home. (see page 18, Purchase and Sale of MH's).

16.) **Posting of Signs** - can be restricted by the park owner. However, a resident must be allowed to display a "For Sale" sign of reasonable size, e.g. 8 1/2 x 11", and in a reasonable place if they are selling their home.

17. **Aesthetic Requirements** - are valid as long as they explicitly define the resident's obligation to keep their home and lot in good condition. For example, a rule requiring the resident to keep their home and lot in good repair does not provide them with any guidelines to go by, and is unenforceable. However, a detailed description of what the park deems "good repair", e.g. cut the grass twice monthly, keep the skirting free from debris and repair any damage done to it within a reasonable time, water the lawn when necessary, etc., eliminates at the outset any confusion that may lead to hard feelings.

Failure to comply with aesthetic requirements may give the park owner the right to remedy the problem and pass the cost along to the resident. However, this may only be done after providing the resident with reasonable notice (e.g., 1 week) of the park's intention to take this step.

18.) **Park Owner's Discretion** - rules which leave a certain leeway for the park owner to exercise discretion are reasonable as long as they fit the purpose for which they are designed and the discretion is reasonably exercised. For example, the park owner must use his discretion in approving prospective buyers, or determining whether a MH meets the park's aesthetic requirements, but he must always specify the limits of that discretion in the rules. He must put residents on notice of the specific requirements that buyers and MH's must meet.

Note: Above all, the park owner must have valid reasons for exercising discretion one way or the other. Although rules may be reasonable, an unreasonable application of those rules is illegal.

19.) **Liability** - the park may disclaim liability for loss or damage caused by any negligent acts of residents but in no event can the park **ever** disclaim liability for reckless or negligent acts performed by its employees. G.L. Chapter 186, section 15.

20.) **Obsolescence** - cannot be determined purely on the basis of age. Homes may become obsolete either because they are aesthetically beyond repair or cannot be made safely inhabitable because of unrepairable defects. In cases where the home has become uninhabitable, the park may ask the owner to remove it if it poses a threat not only for their own safety but also that of other park residents. "Grandfathering out" homes that are aesthetically objectionable is reasonable only as long as provision is made for the current owner to upgrade the home to acceptable aesthetic standards.

21.) **Adult Communities** - there is no such thing, legally, as an adult community. There are only two classifications a MH park fits into; an unrestricted access park, or a retirement park. (See page 18 for a discussion of retirement parks). A retirement park by definition is open only to persons 55 years of age or older. G.L. 151B sec.4(7). Unless a park is a designated retirement community though, it must admit anyone who meets its' residency requirements. Attempted access restrictions, such as, residents must be eighteen years or older, or, no children allowed, no single parents allowed, etc. are illegal. G.L. Chapter 151B section 4(7), G.L. Chapter 93A, section 2.

22.) **Supervision of Children** - reasonable restrictions may be placed on childrens' access to recreational facilities, laundry rooms, etc., but severe restrictions, such as a rule prohibiting resident children form leaving their lot without supervision, or riding bicycles on park roadways, or being out after dark without supervision, for example, exceed the park's rulemaking powers. This is a sticky area, and discretion must be exercised by both parents and park owners. For example although riding bikes is okay, racing is not, and whereas the park can't usurp the parents' function, obviously a 10 year old wandering around after midnight can be asked to return home.

23.) **Cars** - ideally park residents should have space to park cars. Minor repairs, tuneups, ect., should be permitted but it is reasonable to disallow major repairs.

24.) **Fire or Casualty Removal** - if a MH becomes damaged or is rendered uninhabitable by fire or casualty, a park owner cannot require that unit be removed from the park. G.L. Chapter 140 section 32J. The park may require its removal within a reasonable time after the insurance settlement is reached, but this would probable be voluntarily accomplished by the resident anyway, as presumably they would

want to set up a new home on the lot as soon as possible.

25.) **Extra fees for pets** - are chargeable only when some service is provided, either directly (e.g., walking dog, providing pet play area) or indirectly (e.g. where park maintenance includes cleaning up after pets). (See number 11, above).

26.) **Insurance Requirements** - a park owner may suggest that you properly insure your home against liability but cannot require it. The park may require that suppliers of goods and services to park residents carry liability insurance in reasonable amounts. A heating oil supplier, for example, would necessarily be more heavily insured than a home improvement contractor but in either case the requirement must be reasonable, and not preclude a resident from selecting a supplier of their choice. The insurance requirement should approximate the nature, scale, and probability of the potential loss.

27.) **Plantings** - small plantings, flower gardens, etc., should be allowed. The park may require that larger plantings and shrubbery be left behind when the resident moves if the resident cannot return the land to its original condition before moving.

28.) **Additional Charges as Rent** - additional charges imposed for services rendered by the park, either by agreement or dictate (e.g., see number 16), may not be made payable as rent. These are separate obligations.

IV. THE RULES OF THE GAME, PART III: ACCORDING TO THE ATTORNEY GENERAL

A. The Attorney General's Regulations

The Attorney General has promulgated regulations governing landlord resident relationships. These regulations specifically pertain to MHs the lots they occupy and the park grounds as well. 940 CMR 3.17. As they are quite detailed and comprehensive, only a partial summary of some of their more important points is set out here.

It is a violation of law for the park owner to do any of the following:

1.) **Conditions and Maintenance of a MH or MH Lot**

a. Rent premises (i.e., a MH, the lot it occupies, and/or the park grounds), which at the beginning of the residency are unfit for human habitation, or contain a defect which violates the law or poses a threat to the resident's health, safety, or well-being.

940 CMR 3.17(1)(a). "This means that at the inception of the rental there are no latent, i.e. - undiscoverable but existing, defects in facilities vital to the use of the premises for residential purposes **and** that these essential facilities will remain in a condition which makes the property livable for the duration of the tenancy." BHA v. Hemingway, 363 Mass 184 (1973)

b. Fail to maintain the premise in a condition fit for human human habitation or fail to substantially remedy the conditions described in (a),above, after receiving written notice that these conditions exists. 940 CMR 3.17(b).

c. Fail to inform any prospective resident of any defects in the premises he knew or should have known about and which amount to violations of the law. 940 CMR 3.17(c).

d. Fail to make repairs or provide services or supplies within a responsible time if he had promised to do so. 940 CMR 3.17(e) and (f).

e. Fail to reimburse a resident for money expended under the repair and deduct law. (see page 21 for an explanation of the repair and deduct law). 940 CMR 3.17(h).

f. Fail to comply with the State Sanitary Code within a reasonable time after receiving notice of a Code violation from a resident or agency. (see page 17 for a description of the Code's application to MH's).

2.) **Notices and Demands**

a. Send a resident any notice or paper which appears to be an official or legal document but which the park owner knows is not. 940 CMR 3.17(2)(a).

b. Fail or refuse to accept any notice sent to the address to which rent is usually sent, or given to any person who customarily accepts rent on behalf of the owner. 940 CMR 3.17(2)(b).

3.) **Rental Agreements**

a. Raise the rent during the period of the lease unless the lease contains a valid tax escalator clause or clearly and conspicuously describes the conditions upon which the rent will be automatically increased. 940 CMR 3.17(2)(c), (3)(a)(4) and (3)(a)(2).

b. Include any terms in a lease which impose penalty for rent payments less than thirty days overdue, (see Rules Catalog, #3) or which otherwise violate any laws. 940 CMR 3.17(6)(a).

4.) **Miscellaneous**: It is illegal to doe any of the following:

a. Retaliate or threaten to retaliate in any manner against a resident for asserting or attempting to assert any legal rights. (See Retaliatory Actions, p.20 940 CMR3.17(6)(b))

b. Intentionally fail to provide water, light, power, or gas or interfere with the furnishing of such services by another, when the lease or the law require the owner to provide these services. 940 3.17(6)(f), G.L. C.186 s. 14.

c. If obligated by law or a lease to provide gas or electric service, to fail to provide such service or fail to pay the bills when due, whether unintentionally or not. 940 CMR 3.17(6)(g).

A. The State Sanitary Code

Certain provisions of the State Sanitary Code are directly applicable to MH's and others are applicable by analogy. The Code was established to deal with health and safety problems arising mainly out of the leasing of apartments and although it has undergone revisions designed to partially encompass MH's and parks in its scope there are still some areas of uncertain application.

The two major areas of concern explicitly covered by the Code are utility and sewage services and preservation of the park premises from generally unsanitary conditions. A park owner is required to install in accordance with accepted plumbing, gas-fitting and electrical wiring standards, the connections to water, sewer and gas lines; the subsurface sewage disposal system; and all electrical fixtures, outlets, and wiring under their control. 105 CMR 410.351. They also must keep the park premises in a clean and sanitary condition, free from garbage, rubbish or other refuse and correct any condition which affects the health or well being of the residents or the general public. 105 CMR 410.602. This includes plowing the streets and maintaining certain safety features, such as lighting in the common areas of the park.

The application of other sections of the Code to MH's and parks is speculative, and as such not dealt with in this booklet.

V. MOVING IN AND MOVING OUT - VOLUNTARILY

The Purchase and Sale of MH's - A park owner cannot require a prospective buyer of home in the park to purchase it only through them if a resident in the park is offering their home for sale. G.L. Chapter 140 section 32L(3A). It is also unlawful for the park owner to require that they be retained as a broker, or impose any fee charge, or commission for the sale of a home in the park. G.L. Chapter 140 section 32L(4). A resident may voluntarily enter into an agreement with the park owner whereby the owner will act as selling agent for the resident, but if such an agreement is made the owner cannot charge a fee of greater than ten percent of the home's sale price for procuring a buyer.

Residents have the right to sell their homes in place, i.e., to remain on park premises. G.L. Chapter 140 sec. 32LM. However, the park owner has the right to screen prospective tenants to make sure that they will meet the current rules of the park. Generally, this involves an interview with the park owner some thirty days before the planned transfer, and perhaps a credit check to ensure that the new tenant will be able to meet their financial obligations to the park. No person may be refused entrance to a park, and a sale possibly held up thereby, for an arbitrary or unfair reason. Once again, common sense and fairness should be your guide. If no reasonable objection can be made to a prospective buyer, yet the park owner refuses to let that person enter the park, the law is being violated.

Discrimination - That a prospective purchaser is unmarried, has children, is of a certain age, race, creed, or national origin is not a valid reason for refusing them entrance to the park. G.L. Chapter 151B section 4(7). Further, the Attorney General has always maintained that the refusal to allow entrance to a prospective purchaser with children is also discriminatory and therefore illegal. G.L. Chapter 93A section 2. See G.L. Chapter 151B section 4(11).

Retirement Communities - Retirement Communities are the one exception to the nondiscrimination law. A park may be designated a retirement community if it contains only residents over 55 years of age, is constructed expressly for use by the elderly, is twenty acres or more in size, and is self-contained. G.L. Chapter 151 section 4(7). Of course, unless a park at its inception is designated as a retirement community a changeover can be accomplished only through a process of attrition, replacing current tenant with persons over the age limit.

A Cautionary Note For Park Owners

The Attorney General has never objected to a change over from an open access park to a retirement community as long as the attrition process was used and grandfather rights preserved. However, and this applies to parks which at their inception are designated as retirement communities as well, that the Attorney General does not formally object to designation of a park as a retirement community does not mean that such designation brings the park under the protection of the statute. The phrases "constructed expressly for use by the elderly" and "self-contained" are ambiguous at best and at present it is unclear whether the **c.151B 4(7)** retirement community exception applies to mobile home parks.

VI. **What To Do When Moving Out - Involuntarily !**

a park resident usually occupies a lot either by virtue of a lease which sets out the terms and conditions of her tenancy or by a verbal agreement with the park owner that the lot will be rented to her at a certain price for an indefinite period of time. This latter arrangement creates what is legally known as a tenancy at will. Regardless of whether the resident has a lease or is a tenant at will, once the tenancy is created, i.e., once an agreement has been entered into that a certain lot will be rented to the tenant, she has the right to stay in the park as long as she pays the rent and abides by the rules and regulations. **G.L. c.140 32J and 32P.**

A. Evictions - A tenant can be evicted for one of only four reasons. These reasons are:

1. non-payment of rent
2. a substantial violation of any enforceable rule of the park
3. violation of any laws which protect the health or safety of other MH residents
4. a discontinuance in good faith by the park owner of the use of the land as a MH park, subject to any existing agreements between the owner and residents. However, no such discontinuance affects the owners of any MH sold by the park owner, until five years from the date of sale have elapsed.

The owner may not terminate a resident's tenancy unless:

1. The owner has given the resident at least thirty (30) days written notice, by certified or registered mail, stating the reasons for termination and notifying the resident that he has fifteen (15) days from the date of mailing in which to pay the overdue rent, or cure

the substantial violation of the park rules, law or ordinance in order to avoid eviction.

2. The resident has not paid the overdue rent or cured the violation within twenty (20) days from the day on which this written notice was received.

3. The notice is given thirty (30) days from the date of the last alleged violation. Note-No notice is required if the same substantial violation of rules , other than non-payment of rent, occurs within six months from the date on which the last notice of the violation was delivered. Full notice is required for each attempt to evict for non-payment of rent. **G.L. c.140 32J.**

B. Retaliatory Actions

A park owner cannot evict, take reprisals against, or threaten a resident for:

1. commencing, proceeding with, or obtaining relief in any judicial or administrative action pursued to vindicate residency rights.

2. reporting to the appropriate authorities a violation or suspected violation of any law designed to protect the resident.

3. complaining of, or reporting such violation or suspected violation to the park owner or his agent.

4. organizing or joining a tenants union or similar organization.

Any rent increase, attempted eviction, or substantial change in the terms of the tenancy within six months of a resident's bringing or completing an action based on any of the four grounds described above creates a presumption that it is retaliatory. **G.L. c.140 32N, G.L. c.186 18, 940 CMR 3,17(6) (b).**

C. Remedies

The preceding sections serve to broadly outline the laws governing MH park owner-resident relations. being aware of your rights and actually enforcing them are two different matters, however, If the nature of a problem is sufficiently serious, and attempts to obtain relief from the park owner prove fruitless, a resident may consider going to court to vindicate his rights. However, there are intermediate steps that can be taken. The two major intermediate options open to residents are utilizing the "repair and deduct" and "rent withholding laws".

A. Repair and Deduct

The repair and deduct law is designed for those situations which require immediate attention, where the resident cannot tolerate a defective condition in the premises fro very long because it affects her ability to perform essential functions, e.g. washing, going to the bathroom, etc. Four conditions must be met before a resident can invoke the repair and deduct law. These are:

1. that there are violations of the state sanitary code or any other applicable laws (e.g., Attorney General regulation) which create unhealthy or unsafe living conditions.

2. these conditions are certified to exist by the local board of health, a court, or some other appropriate agency.

3. the park owner or his agent is notified in writing of the existence of the violations; and

4. he has failed to begin all necessary repairs or provide for them to begun within five days after such notice and substantially complete all necessary repairs within 14 days after such notice. **G.L. c.111 127L.**

If these requirements are met the resident/s may deduct from their rent an amount necessary to pay for needed repairs, not to exceed four months rent. This amount is determind collectively if action is taken as a group.

B. Rent withholding

The rent withholding law is designed to give residents a self-help remedy which essentially allows them to pay only the fair value of what they are renting. For example, assume rent is $100 per month, $ 20 of which is earmarked for maintenance of the park grounds, and the grounds are littered with refuse and overrun by vermin. If the park owner is unwilling or unable to fix the roblem within a reasonable period of time, the residents may want to consider withholding that portion of their rent which reduces their nmonthly payment to an amount equal to the fair value of the premises, here presumably by $20. Rent can be withheld if:

1. The park owner, her agents or employees knew of the defective condition before the resident began withholding.

2. The resident did not cause the defective conditions

3. The defective conditions can be remedied without the resident having to temporarily move out. **G.L. c.239 8A.**

The three conditions set out above are required by the law. a fourth is required by common sense - withhold only that portion of your rent which reduces your monthly payment to an amount equal to the fair value of the property.

Although you are perfectly within your rights if you decide to withhold your rent because of defective conditions, the park owner still may attempt to evict you. She may do this by suing you in court in what is known as a summary process action. However, as long as you meet the requirements described above you cannot be evicted for withholding rent. **G.L. c.239 8A.** The law provides that even if a resident withholds more than what the court deems equal to "fair value" he still cannot be evicted if this excess amount, plus interest and the owner's costs of suit, is paid to the court within one week of the resident being notified of the excess withholding

In any summary process suit begun because of a rent withholding action, a resident can raise as a defense the park owner's violation of the state sanitary code, breach of the rental agreement, breach of warranty, or any other law protecting the resident's occupancy rights. Once this issue is raised, the court will then determine what the "fair value" of the leased premises actually is, as opposed to the amount the resident was being charged for it. The court may then order the resident/s to pay to the clerk the "fair value" of the premises and us those funds for repair of the defective conditions.

PRACTICAL ADVICE ABOUT RENT WITHHOLDING

1. Notify the park owner of the defective conditions in writing prior to commencing rent withholding. This gives you proof of notice and gives her an awareness of how serious the problem is, as well as a chance to correct it at an early stage.

2. Fairly estimate how much the premises are worth and withhold only that portion of your rent which reduces your monthly payment to the estimated fair value.

3. Notify the park owner in writing of your intent to commence rent withholding and note the amount withheld with language such as "$17.00 rent withheld pursuant to **G.L. c.239,8A"** on the back of every rent check.

4. Deposit the withheld monies in a separate interest bearing bank account established solely for this purpose. When the court makes its determination of "fair value" you will have the money necessary to pay to the court immediately accessible.

5. If eviction proceedings are initiated against you consult a Lawyer.

C. The Consumer Protection Act

The state Consumer Protection Act, **G.L. c.93A**, enables consumers to sue persons engaged in business if they have been injured by a business's use of unfair or deceptive acts or practices. **G.L. c.93A ss2(a), 9.** Many types of activity may violate **c.93A.** Any violation of the provisions of **G.L. c.140 ss32L or 32M (see pages 7-15 & 18)** or the Attorney General's Landlord-Tenant Regulations (see pg 15-17) constitutes a violation of **c.93A.** Beyond theses specific inclusions, any other unfair or deceptive act by a park owner is within the scope of **c.93A** As in so many other cases, using common sense is your best guide to determining whether a particular act or practice violates the Consumer Protection Act.

If you believe that the park owner is violating **c.93A,** and you have been injured as a result, you may want to use **c.93A's** remedy provisions to rectify the problem. (Note - Injury does not mean that you have to have lost money, although in most cases presumably a loss of money will have resulted.)

The remedy provisions of **c.93A** may best be explained by example. Suppose you decide to buy a home from a resident-seller in a local park. In the screening interview the park owner tells you that you must pay an "entrance fee" of $1,000 before you can move into the park. You check around the park and find that everyone living there has had to pay this fee. You really like the home you are intending to buy and decide to pay the fee to get into the park because the park owner refuses to allow you entrance into the park unless you do pay it. You later learn that such "entrance fees" are illegal. To recover your $1,000 loss you must:

1. Write a letter to the owner explaining the circumstance and notifying him that under **c.93A** you are demanding that he return your $1,000, plus interest, which he illegally took. If he does not make a reasonable settlement offer within thirty days (in this case a full refund) then you can:

2. Sue him either in small claims, district, or superior court, depending on your choice and the amount of money involved.

3. Recover up to three but not less than tow times the amount of your actual loss, and in addition recover court costs and attorney's fees. **G.L. c.93A ss9(3), (3A), and (4).**

The provision for recovery of attorney's fees is significate., It is designed to enable a consumer to obtain legal counsel in circumstances where, because of the consumer's relatively small claim or lack of financial resources, a lawyer normally would not be able to take the case. So, even if you have little money or a small claim, you should consider consulting a lawyer about representing you to ensure that your case is professionally handled.

D. Small Claims Court

If you don't want to consult with an attorney and your claim is for $1200 or less, you may want to sue in small claims court. In small claims court not formal legal documents are required to be filed and the technical rules of procedure by which the district and superior courts are governed do not apply. You simply tell your side of the story to the judge, who weighs it against the defendant's, and them makes a decision. Although their monetary limit on claims is $1200, this applies only to the actual loss claimed, so if you wrote a **c.93A** demand letter which the defendant never reasonably responded to, the judge could still award double or triple damages which exceed $1200. **G.L. c. 218 s21.**

Note - if you sue in small claims court you give up your right to a trial by jury or a trial in the superior court. **G.L. c.218 s23.**

Small claims courts are located in each of the district courts of the county in which you reside. Detailed information regarding the small claims procedure may be obtained from the clerk's office in the district court. You may also wish to obtain the booklet <u>How to Sue in Small Claims Court,</u> published by the Massachusetts Public Interest Research Group (Mass PIRG). Consumers can obtain free copies of this booklet by contacting Mass PIRG at either (1) 233 Mt. Pleasant St., Amherst, MA 01002, (413) 256-6434 or (2) 120 Boylston St., Rm 320, Boston, MA 02116, (617) 423-1796. Mass PIRG also offers consumers free counselling on how to use the small claims court procedure.

E. <u>Warranty Protection Against Mobile Home Defects</u>

<u>Defects</u>

Defects in your MH may range from problems as minor as a leaky faucet to those as major as a cracked frame or separating roof. The cause of most defects can be divided into two groups; those resulting from either improper manufacture or improper setup. The vast majority of new mobile homeowners experience one or more defects in their homes. The most commonly reported defects are buckling walls, frame damage, roof and ceiling leaks, malfunctioning doors and windows, and problems with electrical, plumbing, and heating systems.

The federal government has attempted to address this problem through the National Manufactured Housing Construction and Safety Standards Act of 1974. Federal regulations created by authority of the Act set construction standards for all MHs built after June 15, 1976. As a result of these standards MHs are as structurally sound and durable as site-built homes when they leave the factory. The major problems occur between the factory and the MH pad, and a considerable number of those are caused by faulty setup.

It is extremely difficult to determine whether a specific defect was caused by improper manufacture or faulty setup. However, according to a homeowner's manual issued by Champion Homebuilders, possible problems caused by a bad setup include sagging and these related conditions:

1. buckling and/or loosening of walls, partitions, siding, ceilings, doors, floors, linoleum, carpeting, insulation, wiring, sinks, tubs, toilets, weather stripping, miscellaneous original fixtures of the home. ,
.
2. leaking windows, doors, roof, ceiling, walls, floors, seams and junctures in general caused by rain snow or moisture.

3. improper closing, binding and sagging of windows, cabinets and inside and outside doors.

4. malfunctioning of plumbing, water outlets, lighting fixtures, electrical, heating nd air conditioning systems.

Another major MH manufacturer, Rodman Homes, has estimated that tow-thirds of all problems with windows and doors in new MHs are directly traceable to faulty setup. If your MH has been improperly set up it will settle unevenly and out of proper alignment, shortening its useful life, causing the problems described above and resulting in a substantial decrease in the value of your investment. Further, even when properly set up, many homes settle and must be re-levelled so that the frame remains evenly balanced.

E. Warranty Protection

There are three types of warranties that protect you against economic loss caused by defects in your MH or its components. These are manufacturer's written warranties, express warranties; and the statutory implied warranty of merchantability.

1. Written warranties - If you purchased a new MH within the past ten years you probably were given a written warranty covering certain defects for a specified period of time. Typically, such a warranty offers protection against all defects or substantial defects in materials and workmanship in the MH. Non-structural items, such as dishwashers, washers and dryers, furniture, rugs, etc., are often separately warranted by the individual manufacturers who made them.

A warranty protecting you against loss from substantial defects should be interpreted to cover all but strictly cosmetic damage. You should take advantage of this warranty if you experience problems with your MH. Contact your dealer concerning any problems you are experiencing which you believe may be covered by the warranty.

If an item is covered by the warranty but the dealer either refuses to perform his obligations under the warranty or claims that it does not reach the problems you are encountering, he is violating the law, that is, he has breached the warranty. **G.L. c.106 s2-313.**

If you obtained the financing necessary to purchase a new mobile home through either the Veteran's Administration or the Federal Housing Administration federal law requires that the manufacturer provide you with a one-year warranty. **38 USC s1818(h) (2) (B) (i) (1976); 24 CFR 210,520(c)1979.**

2. Express Warranties

Express warranties can be created in three ways:

1. by any statement or promise
2. description of the MH: or
3. use of a sample or model; as long as the statement description, or model goes to the basis of the bargain **G.L. c.106 s2-313.**

Although there is no absolute standard for determining whether something is part of the basis of the bargain in any sales transaction, a rule of common sense should be followed. If, for example, you are shown through a model MH in which the bedroom is 11 1/2' by 14' and you decide to buy the MH at least in part because that is the size bedroom you are looking for, then a warranty that the bedroom in your home will be that size has been created. If it turns out not to be, the dealer has breached an express warranty.

Verbal statements about the features of the home, its durability, value, maintenance requirements, etc., all may create express warranties if they become part of the basis of the bargain. Many people believe that although they were promised that specific requirements would be met, or particular word done, that since these promises were not put in writing they are unenforceable. This is not necessarily the case. If you were promised or shown something which played a large part in your decision to purchase a MH and the promise was never fulfilled or the description or model was at variance with what you ultimately received, the law has been violated.

3. Implied Warranties

In addition to any written or express warranties that may be given in conjunction with the purchase of a MH there is also an implied warranty that the home is reasonably suited to the use for which it was designed. **G.L. c.106 s2-314.** This implied warranty of merchantability is in most cases more extensive and or longer duration than any written or express warranty.

In the case of a MH, any defect which you would not reasonably expect to exist or occur after a certain period of time should be covered by the implied warranty of merchantability. Unlike a written or express warranty, the warranty of merchantability does not cover specific defects, rather it covers everything necessary to make the home fit for the ordinary purpose for which it will be used, i.e., as a dwelling place. For this reason, it is impossible to list what defects it covers, as its applicability depends on a number of factors. For example, if the rugs in your home wore out after only six months use, then unless you subjected them to abnormal wear and tear the implied warranty was breached. However, if the rugs wore out after ten years, the implied warranty probably wouldn't have been breached, as the rugs were fit enough for ordinary use to last ten years without defects appearing.

Of the three warranties described, the implied warranty of merchantability, despite its vague nature, is potentially the most significant protection you have. It cannot be disclaimed or modified by the dealer or manufacturer, despite any other warranties they may give you and despite anything they may say or include in a written document. **G.L. c.106 s2-316A.**

It not only covers defects in items that occur after any written or express warranties have expired but also applies to defects that were never covered by any written or express warranties. This is important in that it potentially affords you statutory protection against the damage caused by faulty setup, which is seldom covered under any other warranties. Some courts have recognized that setup is part of the sale transaction and that the ordinary purpose for which a MH is designed is to provide a modern, comfortable dwelling, free from defects like crooked doors, leaky roofs, and drafty windows, which faulty setup can cause. In cases not involving MHs courts have found that the implied warranty of merchantability was breached when installation of the goods purchased was done improperly.

So, if you have experienced problems with any structural or non-structural part of your mobile home, use your common sense and determine whether a reasonable person could have expected such problems to occur within the time frame they did. If you believe, for example, that your washer shouldn't have broken down, or your windows shouldn't have begun malfunctioning within a certain time frame, then the warranty of merchantability has probably been breached and you should be recompensed for all or some portion of the resulting damage.

C. <u>Enforcing Warranty Rights</u>

Being aware of your rights is one thing, enforcing them is another. If you believe that a written, express, or implied warranty has been breached, notify your dealer, explain your concerns and ask her to remedy the problem.

If you are unsatisfied with the response you get, you might want to contact a consumer aid group or a private attorney.

Conclusion

The foregoing material was designed to describe the "law of MHs" in a nutshell. However, the information contained in this booklet represents only a skeletal outline of the legal issues of which both park owners and residents should be aware. Further and more detailed information on the law affecting any particular issue may be obtained from the resources listed on page Four (4) of this Guide, or from a legal aid or private attorney.

The Attorney General hopes that this Park Law Guide will prove useful to you and that it may meet its intended purpose, to foster an improved climate of park owner-resident relations.